

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Robert M. Hendricks and Jacqueline)	C/A NO. 3:08-3299-CMC-PJG
Taylor Hendricks,)	
)	
Plaintiffs,)	
)	OPINION and ORDER
v.)	
)	
Robert Stepp, Esq., Rhonda Hunsinger,)	
Maurice Hood, Jeannie Weingarh,)	
Michael Taylor,)	
)	
Defendants.)	
_____)	

This matter is before the court on Defendants’ motion to dismiss for lack of subject matter jurisdiction and Plaintiffs’ motions for a preliminary injunction, appointment of counsel, and to amend the complaint. The last of these motions was filed after the Magistrate Judge filed a Report and Recommendation (“Report”) in which she recommended that Defendants’ motion to dismiss be granted and that Plaintiffs’ motions for a preliminary injunction and appointment of counsel be terminated based on the absence of subject matter jurisdiction. For the reasons set forth below, the court adopts the Report in full and denies the motion to amend the complaint.

BACKGROUND

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2), DSC, this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report. On June 19, 2009, the Magistrate Judge issued a Report recommending that Defendants’ motion to dismiss be granted and Plaintiffs’ motions be terminated based on the lack of subject matter jurisdiction. The Magistrate Judge advised the parties of the procedures and requirements

for filing objections to the Report and Recommendation and the serious consequences if they failed to do so.

Plaintiffs timely filed objections. Defendants filed a responsive memorandum addressing Plaintiffs' objections. The matter is now before the court for review of the Report and Recommendation.

STANDARD

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). In the absence of an objection, the court reviews the Report and Recommendation only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation") (citation omitted).

DISCUSSION

The court has made a *de novo* review of the Report and underlying record as to all matters to which Plaintiffs lodged an objection and has reviewed the Report for clear error as to other matters. Having done so, the undersigned finds no errors in the Report and concurs with the Report in its analysis. The court, therefore, adopts the Report in all respects.

The court has also considered Plaintiffs' motion to amend the complaint. That motion is denied for the same reasons that the Magistrate Judge declined to consider new legal theories and related factual allegations that were raised for the first time in Plaintiffs' sur-reply in opposition to the motion to dismiss.

CONCLUSION

For the reasons set forth above, the court adopts the Report in full and dismisses this action for lack of subject matter jurisdiction. This dismissal is without prejudice to proceeding in any other court. The motion to amend is denied and all other motions are terminated without ruling based on the absence of subject matter jurisdiction.

IT IS SO ORDERED.

S/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
July 22, 2009